

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 14846 of 2001

Between:

K.V.D. Kumar, S/o. K.Prabhu Rao,
R/o. Gopayapalli Post, Rajupalem Mandalam,
Proddatur Taluk, Cuddapah Dist.

..... PETITIONER

AND

- 1 The A.P.S.R.T.C , Rep. by it's Chairman & Managing Director ,
Musheerabad, Hyderabad.
- 2 The A.P.S.R.T.C , Rep. by it's Regional Manager
Cuddapah Region, Cuddapah Dist.
- 3 The A.P.S.R.T.C , Rep. by it's Depot Manager , Jammalamadugu Depot,
Jammalamadugu, Cuddapah Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction or writ particularly one in the nature of writ of mandamus declaring the action of the 2nd respondent by appointing the petitioner as cleaner afresh instead of his original post as welder with continuity of service and with full backwages and all other attendant benefits by it's Proceedings No.PA/20A(60)/2000-RM'C' , dt 24.11.2000 is wholly illegal, arbitrary unjust and contrary to law and violative of Art. 14,16 & 21 of the Constitution of India and consequently direct the respondents to appoint the petitioner as welder with full backwages with continuity of his service and with all other attendant benefits.

Counsel for the Petitioner: Ms.B.MALLESWARI

Counsel for the Respondents: MR.P.VINAYAKA SWAMY

The Court made the following:

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 14846 of 2001

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ORDER:

This writ petition is filed seeking a writ of mandamus declaring the action of the 2nd respondent in appointing the petitioner as cleaner afresh instead of his original post as welder with continuity of service and with full backwages and all other attendant benefits by its Proceedings No.PA/20A(60)/2000-RM'C', dt 24.11.2000 as illegal and arbitrary.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondent-Corporation.

A regular departmental enquiry was initiated against the petitioner on 7.3.2000 by issuing a charge sheet with the following allegations:

“You have misbehaved with on duty AMF/JMD at about 12.15 hours on 25.2.2000 in drunken condition in connection with marking of ‘ABSENT’ on 23.2.2000 and demanded to mark it as ‘C-OFF’ and uttered arrogant words without observing the respect towards the supervisors, which shows gross negligence on your part, which constitutes a misconduct under Reg.28(ix-a) of APSRTC, Employees (Conduct) Regulations, 1963”.

There upon the petitioner submitted an explanation. The disciplinary authority having not satisfied with the explanation,

ordered for regular departmental enquiry. Having accepted the Enquiry Officer's report, a show-cause notice was given and by orders dated 6.7.2000 the petitioner was removed from service. Challenging the same, he preferred an appeal before the appellate authority. The same was rejected. Again the petitioner filed a review petition dated 3.10.2000 before the 2nd respondent. The 2nd respondent having considered the case ordered for reinstatement as a Cleaner afresh. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner contended that the punishment imposed by the disciplinary authority and as modified by the Regional Manager is disproportionate to the proved misconduct; that the petitioner served the respondent-Corporation with unblemished service of 22 years and he would lose all his terminal benefits if he is ordered to be appointed afresh and therefore she prays to set aside the punishment and modify the same.

On the other hand, learned standing counsel appearing for the respondent-Corporation vehemently contended that having regard to the gravity of the charge the punishment of dismissal from service cannot be said to be harsh, but having taken note of 22 years of service of the petitioner in the respondent-Corporation, the Regional Manager has taken a sympathetic view in appointing the petitioner as Cleaner afresh and therefore the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this Court.

In disciplinary matters it is the disciplinary authority and thereafter the appellate authority or the reviewing authority which are the fact finding authorities with regard to conducting of enquiry and to take appropriate decision and such findings cannot be interfered with unless the punishment is shocking to the conscience of the court. The manner of enquiry and the findings of the Enquiry Officer have not been disputed before this court by the learned counsel for the petitioner. So also it is not a case where the principles of natural

justice have been violated. In view of the submissions of the learned counsel, it has to be presumed that the enquiry conducted by the Enquiry Officer is proper and in accordance with law.

Now the only question remains in this writ petition is whether the punishment is disproportionate to the proved misconduct. The misconduct alleged against him is that in a drunken condition he uttered some arrogant words against the Supervisor. Beyond that he did not do anything. If he had any intention to take further steps in the absence of intervening circumstances, the petitioner would have acted in unruly manner. He rendered 22 years of service in the respondent-Corporation. It is not the case of the respondents that any similar instances of such nature have taken place prior to the incident in question. Even the reviewing authority observed that the petitioner rendered 22 years of service without major punishments. In such view of the matter, by virtue of uttering arrogant words without respect to the Supervisor the petitioner has to forego all his terminal benefits for the impeccable and unblemished service rendered by him for about 22 years.

Therefore, considering the facts and circumstances of the case, the punishment as modified by the reviewing authority is shocking to the conscience of the court and hence it can be modified. Since it is the sole incident of arrogant behaviour on the part of the petitioner, the petitioner can be reinstated as Welder with continuity of service but without any backwages. However, by virtue of this order the petitioner is not entitled for any monetary benefits but the service of the petitioner can be counted notionally for the purpose of calculation of pensionary and retirement benefits.

The writ petition is disposed of accordingly.

K.C. Bhanu, J.

Date: 22—06—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The Chairman & Managing Director, A.P.S.R.T.C ,
Musheerabad, Hyderabad.
- 2 The Regional Manager, A.P.S.R.T.C ,
Cuddapah Region, Cuddapah Dist.
- 3 The Depot Manager, A.P.S.R.T.C, Jammalamadugu Depot,
Jammalamadugu, Cuddapah Dist.
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